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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-131

12 **JOSEPH GERALD O'SULLIVAN**

**FIRST AMENDED ACCUSATION**

13  
14 Registered Nurse License No. 556208

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing  
20 ("Board"), Department of Consumer Affairs.

21 2. On or about June 29, 1999, the Board issued Registered Nurse License  
22 Number 556208 to Joseph Gerald O'Sullivan ("Respondent"). The Registered Nurse License  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 August 31, 2008, unless renewed.

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STATUTORY PROVISIONS

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3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

7. Title 16, California Code of Regulations, section 1444, provides, in relevant part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare."

1           8.       Code section 125.3 provides, in pertinent part, that the Board may request  
2 the administrative law judge to direct a licensee found to have committed a violation or  
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
4 and enforcement of the case.

5                               **FIRST CAUSE FOR DISCIPLINE**

6                               **(Conviction - Substantially Related Crime)**

7           9.       Respondent is subject to disciplinary action under Code sections 490 and  
8 2761(f), in that Respondent was convicted of a criminal offense which is substantially related to  
9 the qualifications, functions, or duties of a registered nurse, as defined in Title 16, California Code  
10 of Regulations, section 1444, as follows:

11           a.       On or about September 14, 2006, in a criminal proceeding entitled *The*  
12 *People of the State of California v. Joseph Gerald O'Sullivan*, Superior Court of California,  
13 County of Contra Costa, Case No. 291504-9, Respondent was convicted on his plea of no contest  
14 of violating Penal Code section 415(2)(disturbing another person by loud and unreasonable noise),  
15 a misdemeanor.

16           b.       The underlying circumstances are that at approximately 12:00 a.m. on or  
17 about June 1, 2006, after an argument with his wife, Respondent told his wife S.O.<sup>1</sup> that he  
18 wanted to "end it." Respondent placed the barrel of a loaded revolver in his mouth. After  
19 approximately 15 or 20 minutes, Respondent removed the revolver from his mouth. The revolver  
20 was placed atop a television cabinet in the living room. The parties' daughters, ages five (5) and  
21 eight (8) at the time, were in the house at the time of the incident.

22                       Later that day, Respondent again argued with his wife. Respondent's wife  
23 removed the revolver from the television cabinet and threw the revolver from their front balcony  
24 into their front yard. Respondent walked outside to retrieve the gun. Respondent's wife locked  
25 him out of the house. Respondent used the gun to break a window mounted in their front door

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28           1. Initials are used in order to preserve confidentiality. Full patient names will be  
disclosed pursuant to a request for discovery.

1 and dropped the gun inside the house. Respondent's wife called 911. The parties' five (5) year  
2 old daughter was in the house at the time of the incident.

3           The police arrived and found a loaded .38 caliber revolver on the floor inside  
4 Respondent's home. The police also found an SKS assault rifle in a plastic hard shell case in the  
5 master bedroom closet, with a loaded stripper clip in the case, which contained several rounds of  
6 ammunition.

7           The police initiated and obtained an Emergency Protective Order on behalf of  
8 Respondent's wife. The police also called an ambulance to transport Respondent for psychiatric  
9 evaluation under Welfare and Institutions Code section 5150. Respondent was involuntarily  
10 committed to a psychiatric hospital in excess of 72 hours pursuant to Welfare and Institutions  
11 Code section 5150.

12           c.       Respondent was sentenced to three (3) years court probation. Respondent  
13 was ordered to not own or have possession or control any firearm or weapon, to not annoy or  
14 threaten his wife, and to remain in counseling and treatment as directed.

15                               **SECOND CAUSE FOR DISCIPLINE**

16                               **(General Unprofessional Conduct)**

17           10.       Respondent is subject to disciplinary action under section 2761(a) of the  
18 Code on the grounds of general unprofessional conduct, as set forth in paragraph 9, above.

19                               **PRAYER**

20           **WHEREFORE**, Complainant requests that a hearing be held on the matters herein  
21 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

22           1.       Revoking or suspending Registered Nurse License Number 556208 issued  
23 to Joseph Gerald O'Sullivan;

24           2.       Ordering Joseph Gerald O'Sullivan to pay the Board of Registered Nursing  
25 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
26 125.3;

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1                    3.        Taking such other and further action as deemed necessary and proper.

2 DATED: 2/22/08

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Rebecca Hemsten for:  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant